Supreme Court, U.S.
FILED

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No. 98-2713

In The

Supreme Court of the United States

October Term, 1998

FRED DuVALL,

Petitioner,

v.

STATE OF ARKANSAS,

Respondent.

On Petition For Writ Of Certiorari To The Circuit Court For The Twentieth Judicial District, Division 3, Van Buren County, Clinton, Arkansas

PETITION FOR A WRIT OF CERTIORARI

FRED DuVALL, *Petitioner – pro se*
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33pp

QUESTIONS PRESENTED

1) Whether an Arkansas court can nullify the Civil Rights Act of 1871, in its state courts, through an assertion of an Eleventh Amendment defense and exempt from that Act's coverage, all such suits filed in the Arkansas court system pursuant to the federal statute, 42 U.S.C. § 1983, as protected by sections 1 and 5 of the Fourteenth Amendment to the U.S. Constitution.

2) Whether an Arkansas court, in a suit originally filed in a state court, under the provisions of 42 U.S.C. § 1983, can deny jurisdiction of the trial court, on the basis that the real party at interest is the state and in accordance with state law, neither the state, local government actors, or a municipality in the state, can be sued under the Federal Civil Rights Act, 42 U.S.C. § 1983.

3) Whether the Supremacy Clause compels state courts to exercise concurrent jurisdiction with the federal courts and decide federal claims made pursuant to 28 U.S.C. § 1343(3) & (4), when a plaintiff sues under 42 U.S.C. § 1983 and originally files suit in a state court.

4) Whether an Arkansas state court is required to even hear a 42 U.S.C. § 1983 plaintiff when the state claims it is the real party at interest and then asserts an Eleventh Amendment bar to such suits as well as a state constitution bar of absolute immunity from suit in a 42 U.S.C. § 1983 action against local government actors and municipalities.

QUESTIONS PRESENTED – Continued

5) Whether the highest available Arkansas court can deny a *"Cohen"* type hearing on the dismissal of parties from a § 1983 lawsuit because Arkansas Rules of Civil Procedure prohibit such a hearing before a final judgment on all issues.

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PETITION FOR A WRIT OF CERTIORARI

Fred DuVall, respectfully petitions for a writ of certiorari to review the judgment of the 20th Judicial District Court, 3rd Division, Van Buren County, Clinton, Arkansas.

OPINIONS BELOW

The January 19, 1999, decision (App., *infra*, p.A-1) of the 8th Circuit Court of Appeals denying Petitioner, DuVALL's, petition for rehearing en blanc is unreported.

The decision, dated December 10, 1998, of the 8th Circuit Court of Appeals of Petitioner, DuVALL's, district court dismissal of a "***Cohen***" type hearing on immunity, a denial of being heard in his lawsuit and a denial of a remedy in the Arkansas State courts for violations of 42 U.S.C. § 1983 (App., *infra*, p.A-2) is unreported.

The unreported, May 27, 1998, decision of the U.S. District Court for the Eastern District of Arkansas dismissing Petitioner, DuVALL's, challenge to the Arkansas Court of Appeals denial of a "***Cohen***" type hearing on immunity issues, a denial of being heard in his lawsuit, and a denial of a remedy in Arkansas State Courts for violations of 42 U.S.C. § 1983, was dismissed for a lack of subject matter jurisdiction (App., *infra*, p.A-3).

The October 1, 1997, decision (App., *infra*, p.A-4) of the State of Arkansas Court of Appeals dismissing, Petitioner, DuVALL's, plea for a "***Cohen***" type hearing on immunity issues as being contrary to Arkansas Rules of Civil Procedure; a denial of being heard in his lawsuit;

and a denial of a remedy in Arkansas State courts for violations of 42 U.S.C. § 1983; is unreported (App., *infra*, p.A-4).

The 20th Judicial District, 3rd Division, Van Buren County, Arkansas, Judgment/Order dated August 4, 1997, dismissed all government actors and entities from petitioner's action as having absolute immunity from 42 U.S.C. § 1983 lawsuits; when suit was originally filed in a State of Arkansas court, because in accordance with Arkansas law, the state wide court system practice and the opinion and pleading of the Arkansas Attorney General's Office assert a bar against such suits in accordance with Article 5, Section 20 of the Arkansas Constitution; plus, the court's denial to plaintiff, DuVall's oral motion for an immediate "***Cohen***" type appeal; the trial court's order leaving as sole defendant, separate defendant, Larry E. Kuykendall d/b/a as Kuykendall Cement (App., *infra*, p.A-5); this motions hearing is the sole open court occurrence in this matter – no evidentiary trial has been held.

JURISDICTION

Petitioner, DuVALL, invokes the jurisdiction of this Court under § 1291, § 1331 and § 1343, challenging as unconstitutional, the underlying procedure of the Arkansas court system in 42 U.S.C. § 1983 actions filed originally in an Arkansas state court, because the entire state court system consistently holds that the Eleventh Amendment, the Arkansas Constitution and Arkansas laws preclude federal law jurisdiction and redress in

§ 1983 lawsuits, the State asserting such suits lack jurisdiction in its courts as against local government actors and further; that Arkansas municipalities are not suable as "persons" in Arkansas, contrary to ***Monell v. Department of Social Services of the City of New York,*** 436 U.S. 658; Petitioner, DuVALL, asserting these are constitutional violations that keep the Arkansas courts closed to § 1983 lawsuits, which assertion the Arkansas Supreme Court declined to review on October 1, 1997.

Petitioner, DuVALL, asserts that jurisdiction was subsequently proper in the federal district court at Little Rock, Arkansas, based on 28 U.S.C. § 1343, and 28 U.S.C. § 1291, since there had been no evidentiary trial in the state court, it having denied jurisdiction under 42 U.S.C. § 1983 and the provisions of the Fourteenth Amendment, whereunder suit had been brought in the state court in accordance with those laws, but the action was instead heard in accordance with State laws that are in tension with federal concurrent jurisdiction for petitioner's § 1983 lawsuit and federal laws.

Additionally, the highest available Arkansas court consistently holds that the collateral order doctrine exception under 28 U.S.C. § 1291 regarding dismissals for absolute immunity, contravenes the Arkansas Rules of Civil Procedure because under the Arkansas Rules of Civil Procedure, no appeal is available until after final judgment, contrary to ***Cohen v. Beneficial Industrial Loan Corporation,*** 337 U.S. 541 and ***Mitchell v. Forsyth,*** 472 U.S. 511, the Arkansas Court of Appeals declined to review this on October 1, 1997.

Petitioner had timely brought his appeal pursuant to Fed. R. App. P. (4)a., with appellant jurisdiction based on the collateral order exception under 28 U.S.C. § 1291 because the dismissal from petitioner's lawsuit of certain defendants disposed of rights and concluded feasibility of a subsequent appeal on the dismissal of parties, before the matter is disposed of through a final judgment.

This petition has been docketed in this Court within 90 days of the Eighth Circuit Court of Appeals refusing to review the federal district court's ruling.

CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment to the Constitution of the United States:

> SECTION 1. " . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . nor deny to any person within its jurisdiction the equal protection of the laws."
>
> SECTION 5. "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this AMENDMENT."

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983 and its jurisdictional counterpart, 28 U.S.C. § 1343(3) reads as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia,

> subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

28 U.S.C. § 1343(3) reads in relevant part as follows:

> (a)(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; . . .

STATEMENT OF THE CASE

A. How the Federal Question Was Presented

DuVall, as a pro se litigant, exercised his option under the Supremacy Clause to invoke the concurrent jurisdiction of 42 U.S.C. § 1983 in an Arkansas state court, DuVall filing a civil suit in the 20th Judicial District Court, Division 3, Van Buren County, Clinton, Arkansas, under the provisions of 42 U.S.C. § 1983; suit being against certain local government officers and employees, individually and in their official capacities; as well as against the municipality of the County of Van Buren,

Arkansas, plus against an individual doing business as Kuykendal Cement; DuVall asking for damages and injunctive relief against those "persons" responsible for the alleged civil rights violations made under color of law.

The State of Arkansas intervened, asserting DuVALL's action was, in effect, an action against the State, pleading that the State had an Eleventh Amendment immunity for the State, all government actors and the municipality of the County of Van Buren, Arkansas; contrary to this Court's unanimous decision that states cannot apply their sovereign immunity to bar § 1983 claims; ***Howlett By and Through Howlett v. Rose***, 496 U.S. 356 (1990).

This asserted bar to § 1983 claims in Arkansas state courts is well exemplified by ***Herbert Brown d/b/a Lavaca Heating & Electric, Inc. v. Arkansas State Heating, Ventilation, Air Conditioning and Refrigeration (HVACR) Licensing Board***, # 98-984, January 7, 1999, wherein the Arkansas Supreme Court held:

> Under Article 4, Section 20, of the Constitution of the State of Arkansas, "[t]he State of Arkansas shall never be made a defendant in any of her courts."; the constitutional prohibition is not merely declaratory that the state cannot be sued without her consent but that all suits are expressly forbidden; where the pleadings show that the action is, in effect, one against the state, the trial court acquires no jurisdiction; further, where a suit is brought against an agency of the state with relation to some matter in which the appellee represents the state in action and liability, and the state,

> though not a party of record, is the real party at interest so that a judgment for the plaintiff would operate to control the action of the state or subject the state to liability, the action is, in effect, one against the state and is prohibited by constitutional bar." . . .
>
> " . . . the [Arkansas] supreme court concluded that appellant's argument that the trial court erred in dismissing his civil-rights claim for failure to state facts upon which relief could be granted was without merit; a suit against a state official in his or her official capacity is not a suit against that person, but rather is a suit against that official's office; analogously, the supreme court has previously held that neither the state nor a state agency [through its officials] can be sued under the Federal Civil Rights Act, 42 U.S.C. § 1983. ***Murphy v. State of Arkansas***, 127 F.3d 750 (8th Cir. (1997); ***Honor v. Yamuchi***, 820 S.W.2d 267 (1991); ***Egerdahl v. Hibbing Community College***, 72 F.3d 615 (8th Cir. 1985)."

Unknown to Petitioner, DuVALL, the trial court, in consultation with one of the represented defendants, deputy prosecuting attorney, JAMES, had decided to cancel all of DuVALL's requested and approved time to be heard at the Rule 12(b)6 motions hearing on immunity; at the conclusion of defendants argument on the immunity issues, the court advised DuVALL that he had only the residual time to be heard that was originally granted to the defendants, all other time having been cancelled; and the court asserted absolute immunity for the government actors and municipality from being sued under § 1983.

DuVALL, immediately moved, in this open court motions hearing, for a ***Cohen v. Beneficial Industrial Loan Company***, 337 U.S. 541 collateral order type appeal,

the court denied said motion and instructed DuVALL that he would be restricted to procedures provided for under Arkansas Rules of Civil Procedure, instead of under the substantive federal law appeal provisions under 28 U.S.C. § 1291.

Petitioner, DuVALL, timely filed an appeal to the highest available Arkansas court, the Arkansas Court of Appeals, on the issue of a *"Cohen"* type hearing; the denial to being heard; and the trial court's decision that local government actors and municipalities had absolute immunity from § 1983 actions, this court, without comment, refused to review the trial court decision.

B. Proceedings in the Arkansas Court of Appeals

The Arkansas Court of Appeals upheld on October 1, 1997, without comment, the ruling of the 20th Judicial District Court, Van Buren County, Clinton, Arkansas, that under Arkansas law, § 1983 suits against local government actors and municipalities were governed by state immunity, not federal laws, plus a *"Cohen"* type appeal was unavailable under Arkansas Rules of Civil Procedure, until after a final judgment on all issues complained of.

C. Proceedings in the U.S. District Court – Little Rock, Arkansas

Petitioner, DuVALL, filed an original action in the federal district court (Little Rock, Arkansas) asserting that since the state court's decision/order was done while jurisdiction was in federal district court, it was null and

void; and additionally, since the state court had refused to hear/try a § 1983 lawsuit under federal law, instead electing to try Petitioner, DuVALL's, civil rights lawsuit under Arkansas law, there had never been a 42 U.S.C. § 1983 based evidentiary trial to base res judicata on; thus, original jurisdiction for a § 1983 cause and the questions of federal law that were involved, was properly in the Little Rock, Arkansas, federal district court. This federal district court held that such jurisdiction was solely with the U.S. Supreme Court on any court decision regarding the state's U.S. Constitution adherence policy; and thus, the federal district court lacked subject matter jurisdiction and thereby dismissed petitioner's lawsuit in the federal district court on May 27, 1998.

D. Proceedings in the Federal Court of Appeals – 8th Circuit.

This court upheld the decision of the federal district court that it lacked subject matter jurisdiction, plus jurisdiction was solely in the U.S. Supreme Court for any challenge to a state court policy decision that closed state courts to 42 U.S.C. § 1983 lawsuits, regardless of the laws involved. It is clear that a "***Cohen***" type hearing/appeal on a dismissal of certain parties from a § 1983 lawsuit for reason of absolute immunity, can be made at each stage of proceedings, ***Behrens v. Pelletier***, 94-1244 (1997).

REASONS FOR GRANTING THE PETITION

It appears to Petitioner, FRED DuVALL, that the actual underlying issue here is the intent of the Congress

and of federal laws to protect the rights of citizens for those who come to the Arkansas courts as litigants in § 1983 actions, expecting federal law and constitutionally guaranteed protection to be upheld in the state courts; when instead, the state court decisions threaten the integrity of this Court's decisions which implement the strong federal policy behind the civil rights of citizens, because the Arkansas state courts' jurisprudence is in direct conflict with United States Supreme Court precedent which holds:

1) That states cannot apply their sovereign immunity rules to bar § 1983 claims against local governments in state courts; unanimous opinion by Justice Stephens in ***Howlett By and Through Howlett v. Rose,*** 496 U.S. 356 (1990).

2) That states cannot deny jurisdiction under § 1983 on the basis that the real party at interest is the state, in § 1983 claims against local government actors, in suits originally filed in the state court, this Court holding that a suit against a state official is not a suit against the State, ***Hafer v. Melo,*** 502 U.S. 21 (1991); ***ExParte Young,*** 209 U.S. 123 (1908).

3) That Arkansas is compelled to assume jurisdiction over § 1983 actions against local government entities when there is no neutral state rule regarding the administration of its courts which justify a refusal to take jurisdiction in a § 1983 action, because any other result might encourage the state to evade federal law or discriminate against federal causes of action, ***Howlett By and Through Howlett v. Rose,*** 496 U.S. 356 (1990).

4) It has long been clear that under the Supremacy Clause that the substantive law of § 1983 controls whenever a § 1983 action is filed and the "core" requirement of due process under the Fifth and Fourteenth Amendments require that a plaintiff be permitted to be heard in spite of a state's laws that grant absolute immunity from suit of all state actors and entities in § 1983 actions, ***Felder v. Casey***, 487 U.S. 131 (1988).

5) The issue of immunity is one of law and separate from the merits of suits, if a neutral state law prohibits to a party in a § 1983 action, as Arkansas law does, an opportunity to prove that a government actor was not entitled to absolute immunity prior to a final judgment on all issues, the state law predictably alters the outcome of § 1983 claims, based solely on whether the claim is originally brought in state or federal court; ***Cohen v. Beneficial Industrial Loan Co***, 337 U.S. 541 (1949); ***Felder v. Casey***, 487 U.S. 131 (1988); ***Mitchell v. Forsyth***, 472 U.S. 511 (1985); ***Behrens v. Pelletier***, 516 U.S. 299 (1996).

I. THE DECISION OF THE 20TH JUDICIAL DISTRICT COURT, DIVISION 3, VAN BUREN COUNTY, CLINTON, ARKANSAS CONFLICTS WITH THE DECISIONS OF THIS COURT.

As this Arkansas trial court did, the Arkansas trial courts decline to hear and try lawsuits filed under the provisions of 42 U.S.C. § 1983, deciding instead that in the Arkansas court system, Arkansas Rules of Civil Procedure and the Arkansas Constitution prevail over the dictates of the Congress, the Supremacy Clause, and U.S.

Supreme Court jurisprudence. Such decisions have been addressed by this Court many times and are in direct and irreconcilable conflict with the Arkansas courts' holdings.

In 1871 the Forty-second Congress enacted what is now 42 U.S.C. § 1983, pursuant to Sections 1 and 5 of the Fourteenth Amendment, for the protection of certain rights " . . . ***secured by the Constitution and laws*** . . . " against infringement by the states and when these rights are violated, § 1983 creates an action for damages and injunctive relief for the benefit of citizens and other persons against those "persons" responsible for the violations. ***Monell v. Department of Social Services of the City of New York***, 436 U.S. 658 (1978) – stands for the principal that municipalities are "persons" who can be sued under § 1983; also, the December 29, 1979 amendment to 28 U.S.C. § 1343, § 1983 allowed suits against officials in both their individual capacity and official capacity, for damages and prospective relief.

The holding of absolute immunity of government actors to § 1983 actions in the Arkansas courts, which is used to support a motion to dismiss all Arkansas government actors and municipalities, is well established as being contrary to law, ***Burns v. Reed***, 500 U.S. 478 (1991), wherein the U.S. Supreme Court, citing seven (7) cases that this Court had decided since 1980, all of which emphasized that the official seeking absolute immunity bears the burden of showing such immunity is justified for the function in question.

The federal district court cites the ***Rooker-Feldman Doctrine*** as supporting ***res judicata*** and thereon to a lack of subject matter jurisdiction as justification to dismiss

Petitioner, DuVALL's, lawsuit; but, that is simply not what this doctrine stands for; because petitioner's lawsuit was a constitutional challenge to general Arkansas laws, rules, and regulations, that permitted the Arkansas State Court System to deny redress for state action deprivation of federal rights, as state policy was clearly enunciated when the trial court said that: . . . ***Arkansas officials, employees and municipalities have absolute immunity under Arkansas law from being sued in Arkansas courts*** . . . .

Further, the U.S. Supreme Court expressly held that it had not reached the question of ***res judicata,*** in deciding ***District of Columbia Court of Appeals v. Feldman,*** 460 U.S. 462 (1983), that still being an undecided matter.

In ***Felder v. Casey,*** 487 U.S. 131 (1988) this Court made it clear that under the Supremacy Clause of the U.S. Constitution,

> *" . . . the relative importance to the State of its own law is not material when there is a conflict with a valid federal law, . . . and when a state law interferes with or is contrary to federal law, the state law must yield . . . ";*

§ 1983 creates a species of liability in favor of persons deprived of their federal civil rights by those wielding state authority, and/or under the custom/policy of a municipality.

When the trial court ruled under Arkansas Rule of Civil Procedure 12(b)6 that all government actors and municipalities must be summarily dismissed as having absolute immunity, in the state court system, from suits brought under 42 U.S.C. § 1983, it gave no consideration

to the nature of the official acts that were complained of, nor the nature of the function performed by the state actors, contrary to ***Forrester v. White***, 484 U.S. 219 (1988).

In ***Ex Parte Young***, 209 U.S. 123 (1908) and later in ***Hafer v. Menlo***, 502 U.S. 21 (1991), this Court made it clear that in a § 1983 action against state actors, that such an action was NOT a suit against the State; thus, intervention by the State and assertion of Eleventh Amendment immunity for the State was not a defense, nor was intervention appropriate.

It is important to remember that the only issue that has ever been decided in trial, in Petitioner, FRED DuVALL's, 42 U.S.C. § 1983 lawsuit, is the issue of absolute immunity as supporting a motion to dismiss, and that is an issue of law that is separate from the merits of the suit because the question in this matter is whether, through a policy to deny redress in the Arkansas state court system for conduct of government actors that violates civil rights and the policy/custom of municipalities that violates clearly established law, can be permitted to allow the State of Arkansas to be the sole one of the 50 states to continue to close its courts to redress for Civil Rights violations under 42 U.S.C. § 1983, simply because the lawsuit is originally brought in an Arkansas court.

II. THE QUESTIONS PRESENTED ARE IMPORTANT

According to the Harvard Law Journal, Arkansas appears to be the sole remaining state that asserts that it does not have to open its court system to lawsuits filed in accordance with the provisions of 42 U.S.C. § 1983, if such a suit is originally filed in an Arkansas state court.

The highest ranking legal authority for the State of Arkansas, the Arkansas Attorney General in conjunction with the Arkansas Supreme Court unequivocally asserts, in all § 1983 actions originally filed in the state courts that complain of Constitutional violations of provisions of 42 U.S.C. § 1983, as protected by the Fourteenth Amendment; the Eleventh Amendment and the Arkansas Constitution in Article 5, Section 20, interposes an absolute immunity from such federal laws and the state courts should properly apply absolute immunity to all local government actors and municipalities, and prevent them from being sued under the federal Civil Rights laws.

The effect of this state wide policy not only denies redress for constitutional violations of Civil Rights at the threshold of such actions brought in the state court system, it prevents local government actors and municipalities from having to even defend or stand trial for such violations of federal laws.

It is obvious that under the Supremacy Clause, when the Congress passes laws that apply to all citizens and specifically abrogate any Eleventh Amendment defense to those laws, the Congress expects that there will be universal application of those federal questions and laws in all of the states. Arkansas has neither the jurisdiction nor authority to decide such federal questions except in accordance with federal laws; enforcement in state court actions, using state laws, predictably produces different outcomes in lawsuits based on § 1983 litigation; based solely on whether the claim is asserted in state or federal court, contrary to universal application being Congress's intent.

The issue of what process is due in any lawsuit is a question of law, but the Arkansas courts see no bar to denying a party contesting the granting of absolute immunity from being heard in a § 1983 action on the issue of immunity, the trial court deciding that obviously if the defendants had absolute immunity to a § 1983 action, as the highest state court holds, it presumably appears to the trial court to be beyond doubt, that such a party could prove no set of facts in support of any claim regarding such defendants and thus there was no need to allow such a party to be heard.

This is not the issue. The issue is the denial by the trial court of one of the core requirements of due process, in this country's system of jurisprudence, a right to be heard; and, when a party is not allowed to be heard on circumstances, law, or to argue issues central to their action, there has been such an affront to the due process guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, as to make any such action by that trial court, a nullity.

The trial court's cursory assertion of absolute immunity, for the purposes of dismissing all local government actors and the municipality of Van Buren County, resolved an important issue completely separate from the merits of the lawsuit and such dismissal of those parties, based on their having absolute immunity, is effectively unreviewable on appeal from a final judgment.

When petitioner's motion for an immediate "*Cohen*" type appeal was denied by the state trial court as being contrary to state rules of civil procedure, petitioner was further restricted only to those procedures provided for

under state procedural rules; his federal question appeal rights were simply denied.

The issues affected were matters of federal questions brought under a § 1983 action and therefore subject to being decided in accordance with federal law, which holds that a dismissal of parties from a lawsuit, brought under federal law, is a final disposition of a claimed right and not an ingredient of the cause of action.

This Court holds that such a pretrial immunity decision by a trial court is an immediately appealable "final" decision under 28 U.S.C. § 1291; but, it is important to distinguish that in the Arkansas court system, the state procedural rules are being used to supersede federal law, for even though Petitioner, DuVALL's, lawsuit was brought under 42 U.S.C. § 1983, wherein the questions are federal questions, and thus the governing law is federal law; plus, the appeal right that is denied in the state court system is a federal right, the state court system has nevertheless displaced federal law and the Supremacy Clause with state procedural rules as contained in the Arkansas Rules of Civil Procedure.

The difference is that this is not a case where a state's procedural rules determine the ***method*** of arriving at a decision but rather, the state procedural rules are a complete denial of a federal right being decided under federal law, regarding a right to a pretrial appeal to a grant of absolute immunity. ***Cohen v Beneficial Industrial Loan Corp.***, 337 U.S. 541 and ***Mitchell v. Forsyth***, 472 U.S. 511 (1985).

CONCLUSION

The significance of the Arkansas Supreme Court holding on 42 U.S.C. § 1983 actions, the Arkansas Constitution in Article 5, Section 20 and the Arkansas Rules of Civil Procedure, is to limit or deny the applicability of the laws passed by the Congress of the United States and undercut the policies on which civil rights are founded.

For these reasons, Petitioner respectfully submits that this case presents substantial issues requiring full consideration by this Court.[1]

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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[1] Petitioner respectfully suggests that, in light of the Arkansas courts' clear disregard for established Supreme Court precedence, this case may alternatively be suitable for summary disposition.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 98-2713EALR

Fred Duvall,	*	
	*	
Appellant,	*	Order Denying Petition for
vs.	*	Rehearing and for Rehearing
	*	En Banc
State of Arkansas,	*	
	*	
Appellee.	*	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

January 19, 1999

Order Entered at the Direction of the Court:

/s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 98-2713EA

Fred DuVall, Plaintiff-Appellant, v. Mike Bridges, in his individual capacity and as Sheriff of Van Buren County, Arkansas; Stephen E. James, in his individual capacity and as Deputy Prosecuting Attorney for Van Buren County, Arkansas; County of Van Buren, Arkansas; Defendants-Appellees, Larry E. Kuykendall, doing business as Kuykendall Cement Co.; Defendant, State of Arkansas, Defendant-Appellee.	*	Appeal from the United States District Court for the Eastern District of Arkansas. [UNPUBLISHED]

Submitted: December 7, 1998
Filed: December 10, 1998

Before FAGG, BEAM, and LOKEN, Circuit Judges.

PER CURIAM.

Fred DuVall appeals the district court's dismissal of DuVall's 42 U.S.C. § 1983 lawsuit for lack of subject matter jurisdiction. Having carefully reviewed the record and the parties' submissions, we conclude the district court properly dismissed DuVall's action. We thus affirm the district court. *See* 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FRED DUVALL, pro se PLAINTIFF

v. Civil No. LR-C-97-856

MIKE BRIDGES, in his individual capacity and as Sheriff of Van Buren County, Arkansas; STEPHEN JAMES, in his individual capacity and as Deputy prosecuting Attorney for Van Buren County, Arkansas; COUNTY OF VAN BUREN, ARKANSAS; LARRY E. KUYKENDALL d/b/a KUYKENDALL CEMENT CO.; and STATE OF ARKANSAS DEFENDANTS

JUDGMENT

(Filed May 27, 1998)

In accordance with the separate order filed this date, the case is hereby dismissed for lack of subject matter jurisdiction.

DATED this 27th day of May, 1998.

/s/ George Howard, Jr.
UNITED STATES DISTRICT JUDGE

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BY /s/ J. Illegible

LAW OR CHANCERY MANDATE

STATE OF ARKANSAS,)
) SS.
In the Court of Appeals)

BE IT REMEMBERED, That at a session of the Court of Appeals of the State of Arkansas, begun and held in the City of Little Rock, on the 1st day of October, 1997, amongst others were the following proceeding[s], to-wit:

No. CA 97 01030

FRED DUVALL
Appellant(s)

vs. Appeal from Van Buren Circuit – (CIV 97-49)

MIKE BRIDGES ET AL.
Appellee(s)

Motion of separate appellee, Stephen James, Deputy Prosecuting Attorney, to dismiss appeal is granted.

IN TESTIMONY, That the above is a true copy of the order of said Court of Appeals, rendered in the case herein stated, I, Leslie W. Steen, Clerk of said Court of Appeals, hereunto set my hand and affix the seal of said Court of Appeals, at my office in the city of

Little Rock, this 1st day of October, 1997.

/s/ Julie W. Drew

CLERK

BY _____

D.C.

Original to Clerk
CC: Wendy K, Michaelis
Fred DuVall
Robert A. Russell, Jr.
Ed Webb

IN THE CIRCUIT COURT OF
VAN BUREN COUNTY, ARKANSAS
THIRD DIVISION

FRED DuVALL — PLAINTIFF

VS. — NO. CIV-97-55

MIKE BRIDGES, STEPHEN JAMES, AND
LARRY E. KUYKENDALL — DEFENDANTS

ORDER

On July 2, 1997, the plaintiff appeared pro se, separate defendant, Stephen James, Deputy Prosecuting Attorney, appeared by and through his attorney, Wendy Kelley Michaelis, Assistant Attorney General, and separate defendant, Mike Bridges, Sheriff for Van Buren County, appeared by and through his attorney, Robert A. Russell, Jr. Scheduled before the court for a thirty minute hearing were separate defendant James' motion to dismiss, separate defendant Bridges' motion to dismiss, and plaintiff's motion to remove the state as a party at interest. The court finds as follows, based upon the pleadings and arguments of plaintiff and the parties:

1. Plaintiff's complaint against Stephen James, Deputy Prosecuting Attorney, should be dismissed as the court finds Mr. James is entitled to immunity.

2. Plaintiff's complaint against Mike Bridges, Sheriff, should be dismissed as the court finds Sheriff Bridges is entitled to immunity.

3. Plaintiff's motion to remove the state as a party at interest is moot as a result of the court's dismissal of the complaint against Steven James.

4. Plaintiff's oral motion to certify this case for appeal is not properly before the court. Plaintiff should review the Rules of Procedure.

5. Plaintiff's remaining motion to enjoin the County of Van Buren was not scheduled on the court's docket and will not be heard at this time.

6. Separate defendant Larry Kuykendall remains as a defendant and plaintiff may file a motion to strike his answer or schedule the matter for trial, but no ruling regarding Mr. Kuykendall's liability is made on this date.

IT IS THEREFORE ORDERED, this 4th day of ~~July~~ August, 1997, that the complaint against separate defendants, Stephen James and Mike Bridges, is dismissed.

/s/ Charles E. Clawson, Jr.
Honorable Charles E. Clawson, Jr.

Prepared by:

/s/ Wendy Michaelis
WENDY K. MICHAELIS
BAR #87144
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201
(501) 682-1019

Supreme Court, U.S.
FILED

981663 APR 12 1999

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1998

FRED DuVALL,

Petitioner,

v.

STATE OF ARKANSAS,

Respondent.

On Petition For Writ Of Certiorari To The Circuit Court For The Twentieth Judicial District, Division 3, Van Buren County, Clinton, Arkansas

SUPPLEMENTAL APPENDIX

FRED DuVALL, *Petitioner – pro se*
185 El Valle del Sol
2500 East Business Highway 83
Mission, Texas 78572
(956) 580-4266

588

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FRED DuVALL, pro se PLAINTIFF

v. Civil No. LR-C-97-856

MIKE BRIDGES, in his individual capacity and as Sheriff of Van Buren County, Arkansas; STEPHEN JAMES, in his individual capacity and as Deputy prosecuting Attorney for Van Buren County, Arkansas; COUNTY OF VAN BUREN, ARKANSAS; LARRY E. KUYKENDALL d/b/a KUYKENDALL CEMENT CO.; and STATE OF ARKANSAS DEFENDANTS

ORDER

(Filed May 27, 1998)

Plaintiff filed this lawsuit, which was assigned to Chief Judge Reasoner, on October 9th "for redress of a denial in the Arkansas courts of a remedy for violations of 42 U.S.C. § 1983, a denial of the supremacy of federal laws, and a denial of enforcement of concurrent state jurisdiction for the implementation of those laws." He had previously filed suit in the Van Buren County Circuit Court on April 25, 1997, against Bridges and James alleging that their refusal to arrest or issue a warrant for Kuykendall, who plaintiff caught trying to steal the aeration pump off his sewer system, violated the 4th, 5th, 7th, 11th and 14th Amendments to the United States Constitution for which he sought damages and a writ of mandamus for Kuykendall's arrest. He also named as defendants Kuykendall and the County. The exhibits to the complaint revealed that Kuykendall is the co-owner

of the company that had sold plaintiff the pump on which plaintiff had stopped payment on the check for that purchase. Plaintiff filed a petition for removal on July 16th alleging federal question jurisdiction under § 1983 and RICO and complaining that the circuit court on July 2nd had granted motions to dismiss filed by the Attorney General's (AG) office on the grounds that Bridges, James and the County were immune from suit. By order filed on August 11th in *DuVall v. Bridges,* LR-C-97-592, this Court granted James' motion to remand that case to the Van Buren County Circuit Court since plaintiff was not empowered under 28 U.S.C. § 1441(a) to remove those proceedings from state court.

This current complaint recounts the prior filing in the circuit court; the July 2nd hearing in the circuit court; plaintiff's July 15th petition for removal; the circuit court's August 4th order dismissing Bridges, James and the County as absolutely immune although the case was in federal court; the August 11th remand; his August 25th appeal to the Arkansas Supreme Court of the August 4th order; and the October 1st decision by the Arkansas Court of appeals "upholding" the circuit court. Plaintiff alleges that the vacating – after discussion between Bridges and James – of plaintiff's citizen arrest of Kuykendall deprive him of equal treatment and his property interest in the prisoner. Besides damages, plaintiff in this Court seeks the vacating of the circuit court's order of immunity, injunctive relief, and a declaratory judgment finding Section 20 of Article 5 of the Arkansas Constitution and Ark. Code Ann. § 19-10-305 as to immunity to be unconstitutional.

On October 29th, Bridges and the County filed a motion to dismiss on the grounds that plaintiff's claims are barred by the *Rooker-Feldman* doctrine as well as res judicata and collateral estoppel. Plaintiff responded on November 4th. On November 5th, James and the State filed a motion to dismiss invoking the *Rooker-Feldman* doctrine, failure to state a cause of action against both the State and James, sovereign immunity as to the State and James in his official capacity, and qualified immunity as to James in his individual capacity. Plaintiff responded on November 13th.

On December 5th, plaintiff filed a motion to disqualify the AG from representing more than one party as a conflict of interest. Bridges and the County responded on December 12th that there was no such conflict and that plaintiff would not have standing to raise that issue. The State and James also filed a response to the motion to disqualify on December 12th.

Plaintiff filed a motion for declaratory judgment on December 18th regarding the constitutionality of the Arkansas provisions. On December 19th, plaintiff filed a supplemental motion to disqualify counsel. Bridges and the County filed a response to the declaratory judgment motion on December 22nd. Plaintiff next filed a motion to consolidate the state action against Kuykendall with this case on December 29th and a motion for scheduling order and judgment as a matter of law. The State and James filed a response to the supplemental motion to disqualify on December 31st as well as response to the motion for declaratory judgment. They filed their response to the motion to consolidate on January 7th and their response

to the motion for scheduling order and judgment as matter of law on January 8th. Bridges and the County filed their responses to the motions for judgment and consolidation on January 8th.

By order filed on January 9th, plaintiff was directed to not file any additional motions until the Court had ruled on the motions to dismiss. On February 3rd, plaintiff filed a demand for jury trial and response to challenge to jurisdiction. The case was transferred to the undersigned's docket by Judge Reasoner on May 21st as a refiling of the related LR-C-97-592 case.

The *Rooker-Feldman* doctrine was summarized by the Eighth Circuit Court of Appeals in *Neal v. Wilson*, 112 F.3d 351, 356 (8th Cir. 1997) as follows:

> The *Rooker-Feldman* doctrine states that district courts do not have subject matter jurisdiction over challenges to state court decisions in judicial proceedings. The only court with jurisdiction to review decisions of state courts is the United Stats Supreme Court. A federal district court has jurisdiction over general constitutional challenges if these claims are not inextricably intertwined with the claims asserted in state court. A claim is inextricably intertwined if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. In other words, *Rooker-Feldman* precludes a federal action if the relief requested in the federal action would effectively reverse the state court decision or void its ruling. [citations omitted]

The record currently before the Court reflects that the appeal from the August 1997 written ruling of the circuit

court setting out the July 2, 1997 oral ruling was dismissed by the Arkansas Court of Appeals as not being a final order required for appellate jurisdiction since the original case is still pending in the circuit court. Defendants have correctly argued the effect of the *Rooker-Feldman* doctrine under these circumstances. Even plaintiff's motion to consolidate illustrates how the state and federal claims are inextricably intertwined. Thus, subject matter jurisdiction is lacking and dismissal is appropriate.

Accordingly, the October 29th (#3) and November 5th (#7) motions to dismiss are granted. The remaining motions (#13, #21, #23, #27 and #29) are thereby rendered moot.

IT IS SO ORDERED this 27th day of May, 1998.

/s/ George Howard, Jr.
UNITED STATES
DISTRICT JUDGE

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